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May 20, 1996

Federal Communications Commission
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Telecommunications Industry Association
Permitted Written Ex Parte Presentation
In the Matter of Open Video Systems
CS Docket No. 96-46

Dear Chairman and Commissioners:

This letter is to urge you to take decisive deregulatory steps, as called for by the Telecommunications Act of 1996 (the "1996 Act"), to promote the viability of the Open Video System ("OVS") form of carrier entry into multichannel video distribution. Strong and flexible measures are indeed necessary if the unique competitive and infrastructure benefits of OVS deployment are to be realized, and the Telecommunications Industry Association¹ ("TIA") therefore wishes to bring to the Commission's close attention its proposal (set forth in TIA's timely-filed reply comments) for FCC adoption of an OVS upgrade incentive plan.

The record in the above-captioned proceeding compellingly demonstrates that OVS, alone among the alternative vehicles for telephone company entry into video, holds out the promise of a truly open broadband network providing American consumers the benefits of:

- competition not only between rival multichannel video distribution systems, but also between rival video programming packagers on the same distribution system; and
- the widespread availability of advanced telecommunications services and capabilities for all Americans, as envisioned by Section 706 of the 1996 Act.²

¹ The Telecommunications Industry Association has a membership of nearly 600 U.S. companies which manufacture and/or provide communications and information technology equipment, products, systems, distribution services and professional services throughout the world.

² Section 706 of the 1996 Act provides that

[t]he Commission and each State commission with regulatory jurisdiction
over telecommunications services shall encourage the deployment on a

(continued...)



The record makes equally plain, however, that the daunting economic and regulatory burdens posed by OVS will seriously threaten the fulfillment of that promise unless the Commission can craft an OVS framework truly characterized by restraint and flexibility.

Accordingly, TIA's reply comments advocated Commission adoption of an upgrade incentive plan, based closely on that adopted for cable operators in MM Docket 93-215.³ In fact, because the public interest clearly warrants cable operators being likewise allowed to operate their facilities as open video systems, TIA urges the Commission to confirm the availability of both the pre-existing cable upgrade incentive plan and this new OVS upgrade incentive vehicle for cable operators seeking to convert their systems into an OVS facility.

An OVS upgrade incentive plan could breathe life into the OVS paradigm and, in turn, provide a critical vehicle for fulfilling the 1996 Act's express mandate in Section 706 for Commission promotion of the deployment of advanced telecommunications infrastructure to homes and classrooms nationwide. The basic framework for such a plan would be as follows:

- A would-be OVS operator (whether a common carrier or cable operator) may submit an OVS infrastructure investment proposal to both the FCC and the relevant state regulatory agency. The proposal must specifically detail how an investment would further the goal of Section 706 to encourage the deployment of "advanced telecommunications capability" (*i.e.*, high-speed, switched, interactive, broadband telecommunications capabilities) to all Americans and, in particular, elementary and secondary schools and classrooms.
- In exchange for an OVS operator's commitment to construct such facilities, the Commission and the state regulatory body shall consider -- consistent with the directives of Section 706 and the fundamental OVS framework -- appropriate

²(...continued)

reasonable and timely basis of advanced telecommunications capability [defined in § 706 as high-speed, switched, interactive, broadband telecommunications capability] to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

³ See *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (Report and Order and Further Notice of Proposed Rulemaking)*, MM Docket No. 93-215, FCC 94-39 (rel. March 30, 1994) at ¶¶ 295-304.

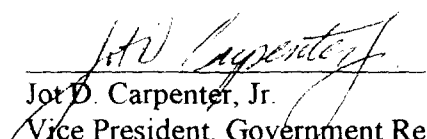
regulatory relief including, but not limited to: forbearance from enforcement of certain OVS statutory or regulatory requirements; application of price cap or other incentive-based regulations to all telephony service provided over the operator's integrated network; relief from additional rate regulation burdens; and deregulation of all other non-basic services provided over the operator's integrated network.

- As it has done with its cable upgrade incentive plan and the social contracts entered into thereunder, the Commission should afford the FCC and state officials with whom OVS operators negotiate the substantive and procedural discretion necessary to pursue on a case-by-case basis incentive plans that advance the goals of Section 706, honor fundamental OVS obligations, and serve the public interest.

This upgrade incentive plan approach would, in essence, provide the Commission with a safety net in the event that its OVS framework does not provide a workable balance for local exchange companies or others weighing the prospect of OVS entry. The Commission would ensure the viability of its OVS framework by providing itself with an established mechanism for responding to requests for tailoring of regulation in a manner that -- while still passing FCC and state muster -- provides the flexibility necessary to make the OVS option a real one. Moreover, this approach would provide a powerful yet flexible vehicle for the Commission and the states to satisfy their challenge under Section 706 to encourage (and carefully monitor) the timely deployment of advanced telecommunications capabilities.

We appreciate your consideration and would welcome the opportunity to further discuss this important matter with you.

Respectfully submitted,



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